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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,916	05/11/2001	David G. Quinn	5935/57	7605

7590

08/29/2003

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

9

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,916

Applicant(s)

QUINN, DAVID G.

Examiner

Matthew F DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The 112 rejections have been withdrawn because of the amendments made by the applicant as well as the interpretation given in the remarks section.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cruz et al. Cruz et al. discloses a catheter with a bolus, wherein the bolus has a nose section, passage section, and a connector section as well as bracketing support section, and a stiffening arch section. (Figures 1-13 and entire reference).
3. Claims 1, 2, 10, 11, 12, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahurkar (USPN 5221256). Mahurkar discloses a bolus for a catheter, comprising: a general cylindrical body molded of resilient plastic and having a cylinder with a lumen, a bolus having a connector section, a passage section and a nose section, where the nose section having a bullet nose and joining the passage section immediately at the front end of the second port and; the thickness of the nose section which is smaller than the outside diameter of the tube and where the nose is offset. (Figure 3).

Art Unit: 3763

4. Claims 11, 13, 16, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Andersen (USPN 6511474).

Andersen disclosed a catheter with a tube section, a bolus section including a connector section, nose section, and a passage section and wherein said nose section has an axis inclined from said longitudinal axis so that said nose section has an external surface portion which is substantially tangent to an imaginary cylinder containing the trailing edge of said port. (See Figures 2, 3 and 4 and entire reference)

5. Claims 11, 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by W. Rusch (USPN 2116083).

W. Rusch discloses a catheter with a tube section, a bolus section including a connector section, nose section, and a passage section and wherein said nose section has an axis inclined from said longitudinal axis so that said nose section has an external surface portion which is substantially tangent to an imaginary cylinder containing the trailing edge of said port. (See Figures 1, 3 and entire reference)

6. Claims 11-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Quinn (USPN 5599322).

Quinn discloses a catheter with a tube section, a bolus section including a connector section, nose section, and a passage section and wherein said nose section has an axis inclined from said longitudinal axis so that said nose section has an external surface portion which is substantially tangent to an imaginary cylinder containing the trailing edge of said port. (See Figures 2-6, 14-19 and entire reference)

Double Patenting

7. Claims 1-5, 8-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6540714, 6517529, 6461321. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims are drawn to a catheter tube having a bolus, wherein the bolus comprises a connector section, a nose section and a passageway section, wherein a port is located in the passageway section.

Response to Arguments

8. Applicant's arguments filed 5/27/03 have been fully considered but they are not persuasive with regards to Cruz et al., Mahurakar and Andersen, but has been persuasive for Conway et al.

9. With regards to the "nose" axis being radially offset from the axis of the "bolus" in the direction of the port depends on the longitudinally axis that is taken from the "bolus". Since no relationship is determined on how or where to take the longitudinally axis, the examiner determines that any axis that runs a length of the nose section would be considered a longitudinally axis. Therefore, any "nose" longitudinal axis that is 1/100 of a degree offset or displaced from the "body" or "connector" or "passageway" or "bolus" axis would meet this limitation. Thus the examiner concludes that the prior art does in

Art Unit: 3763

fact teach this because one of ordinary skill would take any longitudinal axis that is displaced from the longitudinal axis to anticipated the claimed invention.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 9:30-6:00.



Matthew DeSanto
Art Unit 3763
August 11, 2003



BRIAN L. CASLER
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